Supreme Court, U.S.
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No. 94-1188

In the
Supreme Court of the United States
October Term, 1994

AMERICAN PRESIDENT LINES, LTD.
and AMERICAN PRESIDENT COMPANIES, LTD.,

Petitioners,

vs.

GAMMA-10 PLASTICS, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

Scott A. Johnson
Counsel of Record
Todd M. Johnson
CHAMBERLAIN, NEATON & JOHNSON
445 Lake Street, Suite 303
Wayzata, Minnesota 55391
(612) 473-8444

Counsel for Respondent

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QUESTION PRESENTED

In a dispute between a shipper and a carrier concerning lost and damaged cargo, may the carrier assert the statute of limitations provision of the Carriage of Goods by Sea Act incorporated into a bill of lading that was never delivered to the shipper?

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vs.

GAMMA-10 PLASTICS, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

Respondent respectfully requests that this Court deny the Petition for Writ of Certiorari seeking review of the opinion of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals is reported at 32 F. 3rd 1244 (8th Cir. 1994).

The district court's Order and Memorandum Opinion filed July 20, 1992, is unreported. The district court's Order and

Opinion filed December 17, 1993, is reported at 839 F. Supp. 1359 (D. Minn. 1993).

STATEMENT OF THE CASE

This case arises out of a 1988 contract between respondent, Gamma-10 Plastics, Inc.[1] and petitioner, American President Lines, Ltd. ("APL"). The contract called for petitioner to transport respondent's containers of plastic resin from the United States and deliver it to its customers at various ports in China. The resin was packed in bags, which in turn were placed by APL in 40 foot sealed containers for shipment. The controversy concerns four shipments of plastic resin: (1) five sealed containers of resin shipped to Whampoa, China in August 1988; (2) five containers shipped to Shanghai, China in October 1988; (3) six containers shipped to Hong Kong in October 1988; and (4) four containers held by APL in Los Angeles, CA after a dispute arose over the previous shipments.

APL lost respondent's first shipment of resin on the docks of Whampoa and lost the second shipment of resin on the docks in Shanghai. APL ignored respondent's written claims for lost cargo, causing respondent to search for the cargo in China itself. When the resin was finally located, it was discovered that it had been removed from the sealed containers (in violation of China port law) and many of the resin bags were ripped and the product damaged. As a result of the delay in locating the goods and their damaged condition, respondent lost its primary Chinese customer.

The third shipment was shipped to Hong Kong by APL's admitted mistake. APL not only mis-delivered the goods to Hong Kong, but stored them in a very expensive Hong Kong terminal

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[1] Pursuant to Rule 29.1 of the United States Supreme Court Rules, Gamma-10 Plastics, Inc., has no parent company and no non-wholly owned subsidiaries.

despite suggestions from APL's own employees to store the goods in free storage at a nearby APL facility in Taiwan.

The fourth shipment was held by APL in Los Angeles, and since it was never shipped, there was no bill of lading.

The respondent filed this action against APL in a Minnesota state court on July 2, 1990. APL removed the case to federal court in Minnesota under 28 U.S.C. §1332.

APL pled several affirmative defenses under the United States Carriage of Goods by Sea Act (COGSA), 46 U.S.C. app. §1300-1315 (1988). One of the defenses pled by APL was the COGSA statute of limitations that provides: "The carrier and the shipper shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered. . ." COGSA §3(6), 46 U.S.C. app. 1303(6).

The district court granted respondent's motion for partial summary judgment on APL's affirmative defenses. The district court stated that APL could extend COGSA contractually by inserting appropriate language in a bill of lading. The court, however, struck APL's affirmative defenses of limitations after finding that APL delivered its bill of lading to respondent only after respondent's goods were shipped and that respondent, an inexperienced shipper, was unaware of the contractual extension of COGSA in APL's bill of lading.

During the five-week trial, respondent moved the court for permission to amend its pleadings to claim punitive damages. The district court refused that motion as well as respondent's request to instruct the jury on punitive damages. After three days of deliberation, the jury awarded the respondent $500,000.00 in damages for APL's negligence and breach of contract and awarded APL $12,769.98 for unpaid freight on the first shipment. In post-trial proceedings, the district court awarded the respondent pre-judgment interest of $308,417.00. Both parties appealed.

The court of appeals affirmed in part and reversed in part. In ruling on APL's statute of limitations defense, the Eighth Circuit concluded that APL had sustained its burden of proof with respect to the first shipment because APL was able to prove that respondent had received an original bill of lading containing the one-year statute of limitations language and that respondent failed to carry its burden of disproving fair opportunity to take action to avoid detriment arising from the limitations language disclosed by the contents of the bill of lading.

With respect to the other shipments, the Eighth Circuit concluded that APL had not sustained its burden of proof with regard to the second and third shipments because there was no evidence in the record that established that respondent had received a bill of lading more than one-year prior to its commencement of suit. With regard to the fourth shipment (which was never shipped), there was no bill of lading, thus, there was no application of COGSA. The court of appeals also rejected APL's contention that filing a bill of lading with the Federal Maritime Commission gives a shipper constructive notice and binds the shipper to all conditions set forth in the bill of lading.

The Eighth Circuit also concluded that the district court had abused its discretion in denying respondent's motion to amend its complaint to include a claim for punitive damages. The case was remanded to the district court for a new trial on respondent's claims related to the second, third and fourth shipments of resin and its claims for punitive damages under maritime law. That trial is set to begin on April 4, 1995. Petitioner filed its Petition for Writ of Certiorari regarding the statute of limitations provisions on the last three shipments.

REASONS FOR DENYING THE WRIT

I. THE EIGHTH CIRCUIT'S OPINION DOES NOT INVOLVE THE CONFLICT AMONG THE CIRCUITS WITH REGARD TO THE "FAIR OPPORTUNITY" DOCTRINE.

Petitioner attempts to support its petition on a perceived conflict between a number of the circuit courts of appeals regarding the doctrine of "fair opportunity". However, the Eighth Circuit's opinion in this case was based on a very narrow issue having to do with the carrier's initial burden of proof, and upon that issue, there is no conflict among the circuits. This case does not present a direct conflict with any of the circuits upon the issue that formed the basis for the Eighth Circuit's opinion.

The Carriage of Goods by Sea Act ("COGSA"), 46 U.S.C. app. §1300-1315, was passed in 1936 as the American enactment of The Hague Rules, and was part of an international effort to achieve uniformity in bills of lading used in foreign trade and to redress the greater bargaining power enjoyed by carriers over shipper and cargo interests by setting out the duties and responsibilities of carriers. *Union Ins. Soc'y of Canton, Ltd. v. S.S. Elikon,* 642 F. 2d 721, 723 (4th Cir. 1981); THOMAS J. SCHOENBAUM, ADMIRALTY AND MARITIME LAW, §9-13, at 314-315 (1987).

COGSA applies to "[e]very bill of lading...which is evidence of a contract for the carriage of goods by sea to or from ports of the United States, in foreign trade..." 46 U.S.C. app. §1300. COGSA is limited in application to "the period from the time when the goods are loaded on to the time when they are discharged from the ship." 46 U.S.C. app. §1301(e). Thus, COGSA applies while the goods are aboard ship, after loading and before discharge, or, as is commonly said, "tackle to tackle". The Harter Act, 46 app. U.S.C. 190-196 (1988), governs shipments between "ports of the United States and foreign ports",

and applies to the entire period that a carrier has possession of a shipper's goods, from prior to loading until after discharge. The Harter Act contains no limitations period. COGSA allows a carrier and a shipper to enter into an agreement relating to the period prior to loading and subsequent to discharge of the goods from the vessel. 46 U.S.C. app. §1307. The parties accordingly can elect to have COGSA apply during this period. *Colgate Palmolive Co. v. S/S Dart Canada*, 724 F. 2d 313, 315 (2nd Cir. 1983), *cert. denied*, 466 U.S. 963 (1984).

In the instant case, APL inserted the extended terms of COGSA into its bill of lading under a "clause paramount", incorporating by reference the COGSA one year statute of limitations with the following language:

> "[t]he receipt, custody, carriage and delivery of the Goods are governed by the provisions of the transportation agreement evidenced hereby and incorporated by reference, including...(iii) the provisions of the U.S. Carriage of Goods by Sea Act, 1936, ("COGSA")...[which] shall be extended to apply...before the Goods are loaded on and after they are discharged from the vessel, and throughout the entire time during which the Carrier is responsible for the Goods under the transportation agreement."

Respondent received the original bill of lading on the first shipment on or about July 22. The record did not establish when respondent received the original bill of lading with regard to the second and third shipments. No bill of lading was delivered for the fourth shipment.

The Eighth Circuit concluded that with regard to the first shipment, respondent did have a "fair opportunity" to relieve itself of the burden placed on its right to recover from APL for loss and damage to the first shipment created by the statute of limitations. The court further concluded that with regard to the second and

third shipments APL failed to carry its burden of proving that respondent had notice and a fair opportunity to avoid the consequences of the attempted inclusion of a statute of limitations for claims arising from post-delivery loss of and damage to the goods. Since APL never shipped the fourth shipment, there was no bill of lading and COGSA never applied.

The doctrine of fair opportunity arose with regard to COGSA §4(5), 46 U.S.C. app. §1304(5), limiting a carrier's liability for damage to cargo to $500.00 per package "unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading". 46 U.S.C. app. §1304(5).

All courts which have addressed the matter require the carrier to provide the shipper some notice of the COGSA "package/CFU" liability limitation, differing only as to the type of notice. *Henley Drilling Co. v. McGee,* 36 F. 3rd 143, 145 (1st Cir. 1994). The Ninth Circuit is thought to have the most demanding notice requirement. See 2A BENEDICT ON ADMIRALTY, Sect. 166, at pp. 16-28 to 16-29 (1993), mandating that the carrier provide the shipper legible written notice of the COGSA "package/CFU" liability limitation in the bill of lading, employing language substantially similar to COGSA §4(5). See e.g. *Nemeth v. General S.S. Corp.,* 694 F. 2d 609, 611 (9th Cir. 1982).

Other courts, including the Second, Fourth, Fifth and Eleventh Circuits simply require that the bill of lading include a "clause paramount" incorporating COGSA by reference. See e.g. *General Elec. Co. v. M/V Nedlloyd,* 817 F. 2d 1022, 1029 (2nd Cir. 1987), cert. denied, 484 U.S. 1011 (1988); *Cincinnati Milacron, Ltd. v. M/V American Legend,* 804 F. 2d 837, 837 (4th Cir. 1986), en banc (per curiam) rev'g 784 F. 2d 1161 (4th Cir. 1986); *Brown & Root, Inc. v. M/V Peisander,* 648 F. 2d 415, 424 (5th Cir. 1981); *Insurance Co. of North America v. M/V Ocean Lynx,* 901 F. 2d 934, 939 (11th Cir. 1990) cert. denied, 498 U.S. 1025 (1991).

Notwithstanding the foregoing, all of the Circuit Courts are in agreement that the carrier bears the burden of proving that it has afforded the shipper the requisite "fair opportunity" notice. See e.g. *General Elec.*, 817 F. 2d 1029; *Tessler Bros. (B.C.) Ltd. v. Italpacific Line*, 494 F. 2d 438, 443 (9th Cir. 1974); *Couthino, Caro and Co., Inc. v. M/V Sava*, 849 F. 2d 166, 171 (5th Cir. 1988); *Henley Drilling*, 36 F. 3rd at 145; *Cincinnati Milacron*, 784 F. 2d at 1163; *Mori Seika USA, Inc. v. M/V Alligator Triumph*, 990 F. 2d 444 at 449 (9th Cir. 1993).

Although there is a conflict among the circuits on certain aspects of the fair opportunity doctrine, that conflict is not involved in this case. Upon the unique facts of this case, there would not have been a different outcome had this case arisen in any of the other circuits.[2]

With regard to the first shipment, the Eighth Circuit concluded that the language contained in APL's bill of lading did provide respondent with sufficient notice of the limitation on suit provisions and yet respondent waited until after the limitations period described in the bill had expired before bringing suit. Therefore, APL prevailed on its limitations defense. With regard to the second, third and fourth shipments, the Eighth Circuit correctly concluded that APL had not sustained its burden of proof that respondent had a fair opportunity to avoid the

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[2] Even under the Fifth Circuit's position, the outcome in this case would have been the same. cf. *Couthino, Caro and Co., Inc.*, 849 F. 2d at 171 quoting from *Wuerttembergische & Badische Versicherungs-Aktiengesellschaft v. M/V Stuttgart Express*, 711 F. 2d 621, 622 (5th Cir. 1983): "As to the burden of proof issue, we are in agreement with the position of the United States Court of Appeals for the Second Circuit." (citing *In re Isbrandtsen Co.*, 201 F. 2d 281, 285 (2nd Cir. 1953)): "The clause in the *Isbrandtsen* bill of lading expressly provides that the shipper may avoid the limitation by declaring in writing the nature of the goods and higher valuation, paying extra freight. Such a provision is prima facie evidence of what it recites. The [shipper] was at liberty to show the falsity of the recital...". *Isbrandtsen*, 201 F. 2d at 285.

consequences of the attempted inclusion of a statute of limitations for claims arising from post-delivery damage to the goods, and affirmed the district court's grant of partial summary judgment denying APL's defense of limitations with respect to the second, third and fourth shipments.

II. SINCE COGSA §1304(5) IS NOT INVOLVED IN THIS CASE, IT WOULD NOT BE AN APPROPRIATE VEHICLE TO RESOLVE ANY APPARENT CONFLICT AMONG THE CIRCUITS REGARDING THE "FAIR OPPORTUNITY" DOCTRINE.

Petitioner attempts to support its petition by an exhaustive review of the supposed conflict among the various courts of appeal regarding the "fair opportunity" doctrine. However, every one of the cases cited by petitioner in that section (Petition for Writ, pp. 12-20) involve the $500.00 per package limit on the carrier's liability imposed under COGSA §1304(5).

Although the Eighth Circuit in this case used the term "fair opportunity", the issue for decision had to do with the carrier's efforts to include a statute of limitations defense under COGSA §1303(6). Therefore, this case would not be an appropriate vehicle to use in attempting to resolve any perceived conflict among the courts of appeal regarding the extensive line of cases dealing with the fair opportunity doctrine under COGSA §1304(5).

III. THIS CASE IS A "NOTICE" CASE, NOT A TARIFF RATE CASE.

Petitioner attempts to again support its petition on a supposed conflict between the circuits regarding the force of valid tariff provisions. However, this case is not a tariff rate case like all of the COGSA §1304(5) cases and even the "Himalaya clause"

cases. A Himalaya clause is an exculpatory provision which seeks to extend to non-carriers such as stevedores, terminal operators and in-land carriers, the protection available to the carrier under COGSA. See THOMAS J. SCHOENBAUM, ADMIRALTY AND MARITIME LAW, §9-20 at 331.

The COGSA §4(5) cases, supra, as well as the Himalaya clause cases involve tariff and freight rates because if the $500.00 per package limit is not applicable, the carrier will generally charge a higher tariff. This involves the carrier's tariff to be filed with the Federal Maritime Commission (FMC). However, this case is not about freight or the filed tariff. It involves the issue of "notice" of the applicability of the COGSA statute of limitations.

The Eighth Circuit in this case agreed with the Eleventh Circuit Court of Appeals in *AllState Ins. Co. v. Int'l Shipping Corp.*, 703 F. 2d 497 (11th Cir. 1983) in holding that the filing of a bill of lading with the FMC gives a shipper notice only of the tariff and does not give a shipper constructive notice of all conditions set forth in the bill of lading. The Eighth Circuit in this case and the Eleventh Circuit in *AllState* held that limitation of liability provisions are not related to rates or charges and are therefore not required to be included in the tariff. A shipper is bound only by that portion of the tariff that involves the carrier's rates or charges and is not bound by limitation of liability provisions. cf. *Marvirazon Compania, S.A. v. H. J. Baker & Brothers*, 674 F. 2d 364, 366 (5th Cir. 1982) n1 & 2, quoted in AllState, 703 F. 2d at 500. See also, *Encyclopedia Brittanica, Inc. v. SS Hong Kong Producer*, 422 F. 2d 7 (2d Cir. 1969), *cert. denied*, 397 U.S. 964 (1970).

Even in *Insurance Co. of North America v. Puerto Rico Marine Management, Inc.*, 768 F. 2d 470 (1st Cir. 1985), cert. denied, 474 U.S. 1102 (1986), the consignee received a short form bill of lading which incorporated by reference the provisions in the long form bill of lading on file with the FMC. Again, in the instant case, respondent received a long form bill of lading with regard to the first shipment and as to that shipment petitioner

prevailed on its statute of limitations defense. With regard to the last three shipments, there was no evidence that respondent ever received any bill of lading so as to give respondent notice of the limitations. Since the extension of COGSA's limitation provisions to the post-discharge period is by contract, the contract (bill of lading) must be delivered to the respondent. On the first shipment where the petitioner proved that it had delivered the bill of lading to respondent, petitioner prevailed. On the final three shipments where it did not prove that it had delivered the bill of lading to respondent, it did not prevail. This case does not present a further conflict between the circuits.

IV. THIS CASE PRESENTS A UNIQUE FACTUAL SITUATION NOT LIKELY TO RECUR.

The application and scope of this case is "fact specific". The basis upon which the legal issues in this case were resolved will ensure that it will have no importance outside of its own facts.

Petitioner, in a flight of hyperbole, contends that the issues raised in this case will impact on business contracts, filed tariffs, COGSA, "forum-shopping", insurance risk allocation, and international law. Petitioner's suggestion is simply preposterous. Dealing with petitioner's "importance" claims individually, the following conclusions are inescapable:

a. **Affect on Business Contracts.** The issues in this case will have no affect on business contracts or contract cases. The contract in this case was the bill of lading. With regard to the first shipment, petitioner proved that it had delivered the bill of lading including the language extending COGSA to the post-discharge period and including the statute of limitations. On that shipment, petitioner prevailed. On the three shipments where it could not prove that it had delivered the contract (bill of lading), necessary to extend COGSA to the post-discharge period and to include the COGSA statute of limitations, petitioner lost. This is simply basic

contract law. The result in this case will not affect contract law or contract cases whatsoever.

b. **Filed Tariffs.** This case is not a tariff rate case. Again, based on the facts of this case, no conflict among the Circuits is presented.

c. **COGSA.** This case does not create any new law interpreting or extending COGSA nor is it in conflict with COGSA decisions in other circuits. This is a case involving COGSA extension to the post-discharge period by contract and the inclusion of the statute of limitations language by contract. Without delivery of the contract, there is no COGSA application to the last three shipments. On the first shipment, where delivery of the contract was proven, Petitioner prevailed.

d. **Forum-Shopping.** This case will not encourage forum-shopping in any manner. As stated above, the outcome of this case would have been the same in any of the Circuits based on the issue of the carrier's burden of proof.

e. **Insurance Risk Allocation.** This case will have no impact on insurance risk allocation.

f. **International Law.** While the "fair opportunity" doctrine may be a creature of American jurisprudence, this case certainly is not an appropriate case to try to resolve any perceived conflict among American law and the law in other countries. Congress has not revised COGSA since 1936. Any effort to bring COGSA in line with the law in other countries is a matter for Congress to address, not this Court.

Finally, it must be noted that this case was remanded to the District Court of Minnesota for re-trial (commencing April 4, 1995) of respondent's claims regarding the second, third and fourth shipments as well as respondent's claim for punitive damages under maritime law based upon petitioner's conduct manifesting deliberate disregard for the rights of respondent. See App. A at A-1.

CONCLUSION

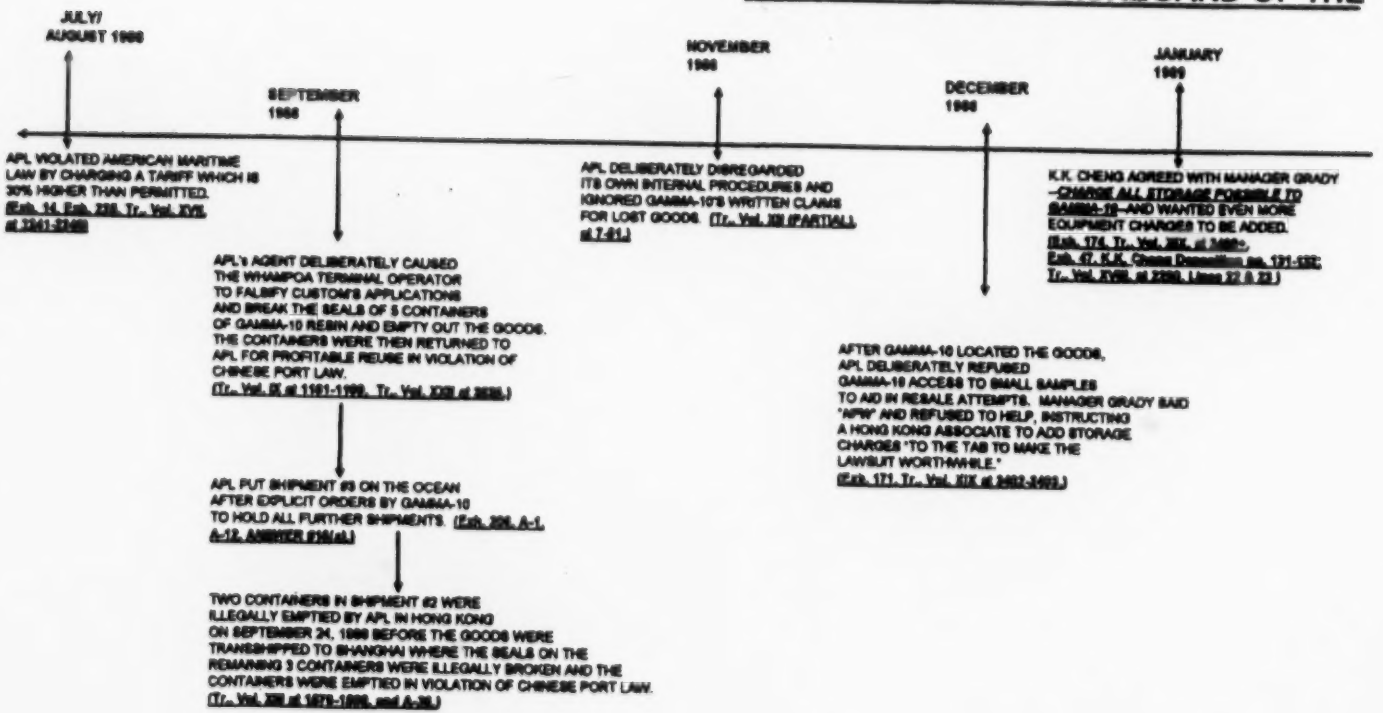
For these reasons, respondent respectfully requests that the Petition for Writ of Certiorari be denied.

Dated: February 3, 1995.

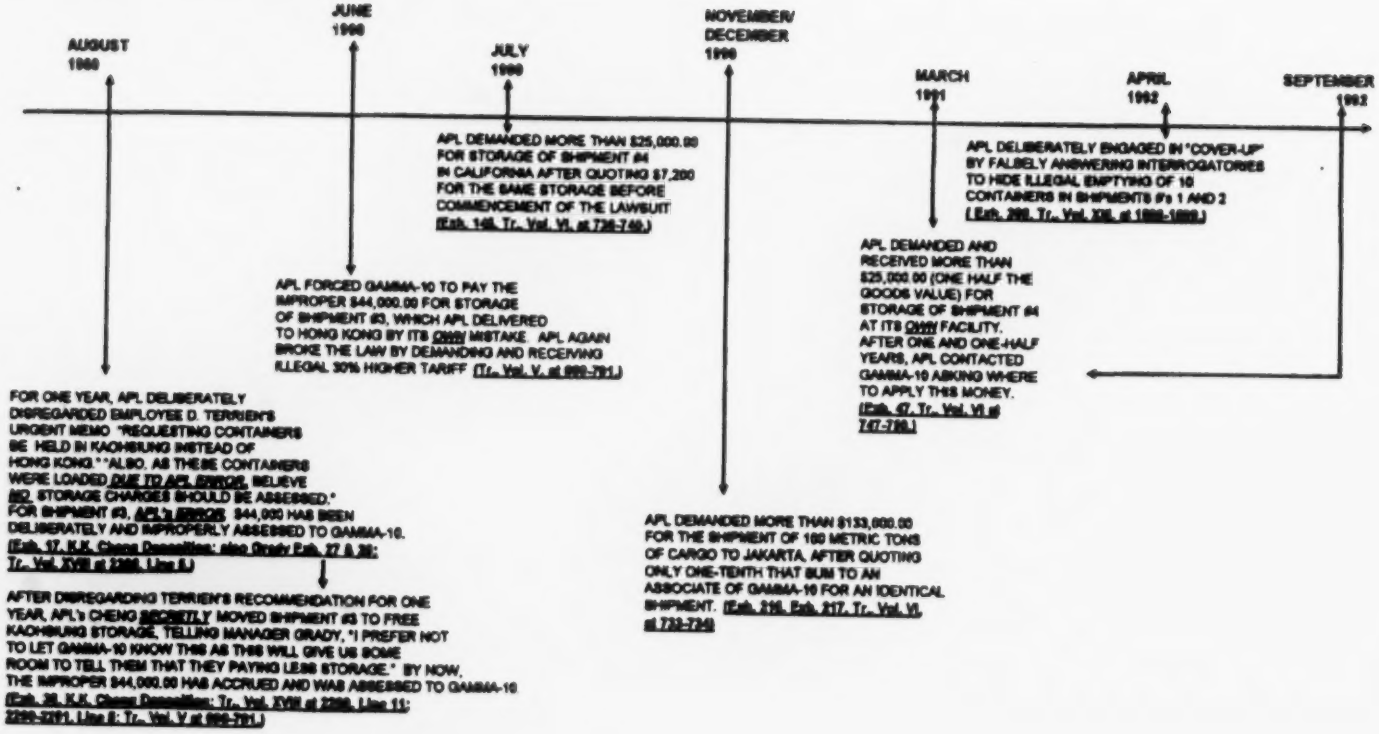
Respectfully submitted,

Scott A. Johnson
Counsel of Record
Todd M. Johnson
CHAMBERLAIN, NEATON & JOHNSON
445 Lake Street, Suite 303
Wayzata, MN 55391
(612) 473-8444
Counsel for Respondent

APL's DELIBERATE DISREGARD OF THE


JULY/ AUGUST 1988
APL VIOLATED AMERICAN MARITIME LAW BY CHARGING A TARIFF WHICH IS 30% HIGHER THAN PERMITTED. (Exh. 14, Exh. 238, Tr., Vol. XVII, at 3341-3348)
SEPTEMBER 1988
APL's AGENT DELIBERATELY CAUSED THE WHAMPOA TERMINAL OPERATOR TO FALSIFY CUSTOM'S APPLICATIONS AND BREAK THE SEALS OF 5 CONTAINERS OF GAMMA-10 RESIN AND EMPTY OUT THE GOODS. THE CONTAINERS WERE THEN RETURNED TO APL FOR PROFITABLE REUSE IN VIOLATION OF CHINESE PORT LAW. (Tr., Vol. IX at 1191-1199, Tr., Vol. XXII at 3836.)
APL PUT SHIPMENT #3 ON THE OCEAN AFTER EXPLICIT ORDERS BY GAMMA-10 TO HOLD ALL FURTHER SHIPMENTS. (Exh. 204, A-1, A-12, ANSWER #16(a).)
TWO CONTAINERS IN SHIPMENT #2 WERE ILLEGALLY EMPTIED BY APL IN HONG KONG ON SEPTEMBER 24, 1988 BEFORE THE GOODS WERE TRANSSHIPPED TO SHANGHAI WHERE THE SEALS ON THE REMAINING 3 CONTAINERS WERE ILLEGALLY BROKEN AND THE CONTAINERS WERE EMPTIED IN VIOLATION OF CHINESE PORT LAW. (Tr., Vol. XIII at 1679-1686, and A-36.)
NOVEMBER 1988
APL DELIBERATELY DISREGARDED ITS OWN INTERNAL PROCEDURES AND IGNORED GAMMA-10'S WRITTEN CLAIMS FOR LOST GOODS. (Tr., Vol. XII (PARTIAL), at 7-61.)
DECEMBER 1988
AFTER GAMMA-10 LOCATED THE GOODS, APL DELIBERATELY REFUSED GAMMA-10 ACCESS TO SMALL SAMPLES TO AID IN RESALE ATTEMPTS. MANAGER GRADY SAID "NFW" AND REFUSED TO HELP, INSTRUCTING A HONG KONG ASSOCIATE TO ADD STORAGE CHARGES "TO THE TAB TO MAKE THE LAWSUIT WORTHWHILE." (Exh. 171, Tr., Vol. XIX at 2402-2403.)
JANUARY 1989
K.K. CHENG AGREED WITH MANAGER GRADY --CHARGE ALL STORAGE POSSIBLE TO GAMMA-10--AND WANTED EVEN MORE EQUIPMENT CHARGES TO BE ADDED. (Exh. 174, Tr., Vol. XIX, at 2460+, Exh. 47, K.K. Cheng Deposition pp. 191-192; Tr., Vol. XVIII, at 2760, Lines 22 & 23.)

RIGHTS OF GAMMA-10 1988 THROUGH 1992


AUGUST 1988
JUNE 1990
JULY 1990
NOVEMBER/ DECEMBER 1990
MARCH 1991
APRIL 1992
SEPTEMBER 1992
APL DEMANDED MORE THAN $25,000.00 FOR STORAGE OF SHIPMENT #4 IN CALIFORNIA AFTER QUOTING $7,200 FOR THE SAME STORAGE BEFORE COMMENCEMENT OF THE LAWSUIT (Exh. 148, Tr., Vol. VI, at 736-749.)
APL DELIBERATELY ENGAGED IN "COVER-UP" BY FALSELY ANSWERING INTERROGATORIES TO HIDE ILLEGAL EMPTYING OF 10 CONTAINERS IN SHIPMENTS #'s 1 AND 2 (Exh. 288, Tr., Vol. XIII, at 1888-1889.)
APL FORCED GAMMA-10 TO PAY THE IMPROPER $44,000.00 FOR STORAGE OF SHIPMENT #3, WHICH APL DELIVERED TO HONG KONG BY ITS OWN MISTAKE. APL AGAIN BROKE THE LAW BY DEMANDING AND RECEIVING ILLEGAL 30% HIGHER TARIFF (Tr., Vol. V, at 666-791.)
APL DEMANDED AND RECEIVED MORE THAN $25,000.00 (ONE HALF THE GOODS VALUE) FOR STORAGE OF SHIPMENT #4 AT ITS OWN FACILITY. AFTER ONE AND ONE-HALF YEARS, APL CONTACTED GAMMA-10 ASKING WHERE TO APPLY THIS MONEY. (Exh. 47, Tr., Vol. VI at 747-798.)
FOR ONE YEAR, APL DELIBERATELY DISREGARDED EMPLOYEE D. TERRIEN'S URGENT MEMO "REQUESTING CONTAINERS BE HELD IN KAOHSIUNG INSTEAD OF HONG KONG." "ALSO, AS THESE CONTAINERS WERE LOADED DUE TO APL ERROR, BELIEVE NO STORAGE CHARGES SHOULD BE ASSESSED." FOR SHIPMENT #3, APL's ERROR, $44,000 HAS BEEN DELIBERATELY AND IMPROPERLY ASSESSED TO GAMMA-10. (Exh. 17, K.K. Cheng Deposition; also Grady Exh. 27 & 28; Tr., Vol. XVIII at 2288, Line 6.)
AFTER DISREGARDING TERRIEN'S RECOMMENDATION FOR ONE YEAR, APL's CHENG SECRETLY MOVED SHIPMENT #3 TO FREE KAOHSIUNG STORAGE, TELLING MANAGER GRADY, "I PREFER NOT TO LET GAMMA-10 KNOW THIS AS THIS WILL GIVE US SOME ROOM TO TELL THEM THAT THEY PAYING LESS STORAGE." BY NOW, THE IMPROPER $44,000.00 HAS ACCRUED AND WAS ASSESSED TO GAMMA-10 (Exh. 36, K.K. Cheng Deposition; Tr., Vol. XVIII at 2288, Line 11; 2290-2291, Line 8; Tr., Vol. V at 666-791.)
APL DEMANDED MORE THAN $133,600.00 FOR THE SHIPMENT OF 100 METRIC TONS OF CARGO TO JAKARTA, AFTER QUOTING ONLY ONE-TENTH THAT SUM TO AN ASSOCIATE OF GAMMA-10 FOR AN IDENTICAL SHIPMENT. (Exh. 216, Exh. 217, Tr., Vol. VI, at 733-734)